

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

JAMIE LEE ANDREWS, et al.	)	
	)	
Plaintiffs,	)	CIVIL ACTION FILE
	)	NO. 1:14-CV-3432-WSD
v.	)	
	)	ATLANTA, GEORGIA
AUTOLIV JAPAN LTD., et al.	)	
	)	
Defendants.	)	
_____	)	

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE WILLIAM S. DUFFEY, JR.,  
UNITED STATES DISTRICT JUDGE

**ATTORNEY'S FEES HEARING**  
Wednesday, July 26, 2017

APPEARANCES OF COUNSEL:

For the Plaintiffs:	BUTLER WOOTEN CHEELEY & PEAK LLP
	(By: Tedra L. Cannella
	Rory Allen Weeks
	Brandon L. Peak)
For Defendant Autoliv:	ALSTON & BIRD LLP
	(By: Jenny Ann Mendelsohn
	Douglas G. Scribner)

*Proceedings recorded by mechanical stenography  
and computer-aided transcript produced by*  
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I N D E X

<i>Witness</i>	<i>Page</i>
<i>DOUGLAS G. SCRIBNER</i>	
<i>Direct (By Ms. Mendelsohn)</i>	<i>5</i>
<i>Cross (By Ms. Cannella)</i>	<i>16</i>

Wednesday Afternoon Session

July 26, 2017

2:30 p.m.

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P R O C E E D I N G S

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(In open court:)

THE COURT: Good afternoon, everybody. This is the hearing on Autoliv's motion for attorney's fees, which is in Civil Action No. 14-3432.

Would counsel announce their appearances, please?

MS. CANNELLA: Your Honor, Tedra Cannella for the plaintiffs.

Mr. Butler is out of the state today. Brandon Peak is here with me. He's a partner at the firm, and he's just here to address anything that comes up that needs to be addressed.

And then Rory Weeks is here as well for the plaintiff.

Thank you.

THE COURT: So you have got lots of reinforcements.

And there is one more person.

MR. PEAK: This is Ms. Andrews.

MS. CANNELLA: Yes, I'm sorry, Your Honor, most

1 importantly, Ms. Andrews.

2 THE COURT: Ms. Andrews, how are you?

3 MS. CANNELLA: And then Cathy Huff is here. She's  
4 a paralegal at our firm as well.

5 THE COURT: Thank you.

6 MR. SCRIBNER: Good afternoon.

7 THE COURT: Good afternoon.

8 MR. SCRIBNER: Jack Scribner on behalf of Autoliv,  
9 and Jenny Mendelsohn on behalf of Autoliv as well.

10 THE COURT: All right. Good afternoon.

11 This, of course, is on Autoliv's motion for  
12 attorney's fees and expenses pursuant to OCGA Section  
13 9-11-68.

14 The plaintiff opposes the motion and had filed to  
15 request a hearing on it. That request was granted and  
16 scheduled for today.

17 I want you to know that I have read everybody's  
18 submissions, including the materials that were given to me,  
19 some yesterday, some the day before. So I have had a chance  
20 to review those.

21 But since it is Autoliv's motion, I will let them  
22 start.

23 MR. SCRIBNER: Thank you, Your Honor.

24 Since you have read the briefing on it, we would  
25 like to start with the actual testimony and answer any

1 questions you have after that.

2 THE COURT: That would be fine.

3 MR. SCRIBNER: Thank you.

4 May I approach, Your Honor?

5 THE COURT: You may.

6 -- -- --

7 DOUGLAS G. SCRIBNER

8 being first duly sworn by the Courtroom Deputy Clerk,

9 testifies and says as follows:

10 -- -- --

11 DIRECT EXAMINATION

12 BY MS. MENDELSON:

13 Q. Can you state your name for the record?

14 A. Doug Scribner.

15 Q. Mr. Scribner, can you provide the Court with a summary  
16 of your educational background and experience?

17 A. I attended the University of Toledo, and graduated with  
18 a Bachelor's of Business Administration majoring in Finance  
19 in 1992.

20 I attended law school at the University of Toledo, and  
21 graduated in 1995, and joined the law firm of Alston & Bird  
22 in September of 1995.

23 I joined what then was the trial practice group, which  
24 ultimately morphed into the litigation and trial practice  
25 group, and I have been there ever since.

1 Q. And what year did you become a partner?

2 A. 2002.

3 Q. Have you held any positions of leadership at Alston &  
4 Bird?

5 A. From 2009 to 2015, I was the co-chair of the litigation  
6 and trial practice group, where I managed 180 lawyers or so  
7 in eight offices, all concentrated in litigation.

8 I am currently the co-chair of the manufacturing and  
9 industrials team, where we concentrate on representing  
10 manufacturers in litigation matters.

11 Q. What types of cases do you typically handle?

12 A. Mostly commercial disputes between businesses, mostly  
13 manufacturers. As a younger lawyer I did a ton of product  
14 liability cases, and I still do product liability defense, a  
15 little less so now.

16 Q. Do you represent plaintiffs, defendants, or both?

17 A. Over the past seven years, my practice mix has been  
18 about 50/50. I represent plaintiffs in commercial matters  
19 and defendants in commercial matters. I don't represent  
20 plaintiffs in personal injury cases.

21 Q. Do you have any jury trial experience?

22 A. I have tried over twenty cases as lead counsel.

23 Q. As lead counsel, have you tried any products cases?

24 A. Approximately half have been product related cases that  
25 I have tried.

1 Q. I want to switch gears a little bit and talk about this  
2 litigation.

3 What has been your role in this litigation?

4 A. I have been the lead trial lawyer from the beginning  
5 until today.

6 Q. Is this your first case for Autoliv?

7 A. No. I have represented Autoliv for a decade or so,  
8 primarily defending them in products cases where the  
9 allegations involve alleged defective seatbelts and/or  
10 airbags.

11 Q. And you touched on this a little bit in your answer, but  
12 what does Autoliv do?

13 A. Autoliv is an occupant restraint company that supplies  
14 products to auto makers to include in their vehicles.

15 Q. I'm going to refer you now to what's been previously  
16 marked as Exhibit A.

17 I believe you have an exhibit notebook in front of you.

18 MS. MENDELSON: And, Your Honor, you should have  
19 one as well.

20 THE COURT: I do.

21 A. I am ready.

22 Q. Do you recognize Exhibit A, Mr. Scribner?

23 A. I do.

24 Q. And what is it?

25 A. This is an offer of settlement letter that I sent to

1 Mr. Butler on May 25, 2016, in this case.

2 Q. Can you provide the Court with the status of the  
3 litigation at the time that you sent that letter?

4 A. Sure. As the Court is aware, this is a product  
5 liability wrongful death case.

6 Originally the plaintiffs sued 13 defendants that fell  
7 into three categories. One was Mazda, the maker of the 2005  
8 Mazda 3 at issue in the case, one was Bosch that provided the  
9 electronic equipment for the sensors of the airbag, and one  
10 group was the Autoliv defendants.

11 At the time we made this proposal, discovery had been  
12 completed, fact witnesses had been deposed, documents had  
13 been produced, experts had been deposed.

14 We had filed a motion for summary judgment, and the  
15 plaintiffs had responded, and I believe we had filed a  
16 reply. I'm not 100 percent certain about that, but I'm  
17 pretty sure the briefing was complete when we made this  
18 offer.

19 Importantly from our perspective in terms of why we made  
20 the offer when we did, we had learned during the course of  
21 discovery that the plaintiffs' expert regarding the airbag  
22 which did not deploy during this accident conceded that it  
23 was not Autoliv's part that failed. The plaintiffs' expert  
24 said that it was a Mazda-Bosch problem.

25 And then with respect to the seatbelt, we felt



1 strongly -- and I know that the plaintiffs disagree. We felt  
2 strongly that the design of that seatbelt was a Mazda design  
3 and not an Autoliv design, and so we felt that our chances  
4 for summary judgment were good.

5 So we made this proposal at this time knowing that we  
6 would soon be receiving a ruling from Your Honor on summary  
7 judgment.

8 Q. How much did you offer to settle the case for in your  
9 letter?

10 A. Two hundred thousand dollars, and we offered to  
11 structure any portion of a settlement for the benefit of  
12 Ms. Andrews' minor daughter.

13 Q. What did you consider before making this offer,  
14 Mr. Scribner?

15 A. Well, we considered the entire case. We considered the  
16 likelihood of success on summary judgment for us. We  
17 considered the likelihood that the Eleventh Circuit would  
18 determine that we were entitled to judgment as matter of  
19 law.

20 We considered the likelihood that the plaintiff would  
21 recover against Autoliv at trial, the likelihood that -- or  
22 strike that -- how much the plaintiff could recover.

23 And importantly, we also considered how much  
24 responsibility would be allocated toward Autoliv given the  
25 testimony that had been given in the case, and the fact that

1 Mazda and Bosch seemed to be far more culpable, for lack of a  
2 better word, in the case.

3 In addition, the decedent himself drove unfortunately  
4 off the road in a one-vehicle accident, and so some  
5 responsibility could be his as well.

6 And, finally, we considered the cost of litigating going  
7 forward and how expensive it would be if we didn't settle the  
8 case.

9 Q. Did you receive a response from plaintiffs to your offer  
10 letter?

11 A. Yes.

12 Q. I'm going to refer you now to Exhibit B, which I believe  
13 is in front of you. Do you recognize that document?

14 A. Yes.

15 Q. Is that the response that you received to your offer  
16 letter?

17 A. Correct.

18 Q. And how shortly after the offer letter was sent via  
19 e-mail did you receive that?

20 A. We sent our offer of settlement via both certified mail  
21 as well as e-mail, because the parties had agreed that they  
22 would exchange all correspondence in the case via e-mail.

23 Mr. Butler responded to my offer of settlement a few  
24 minutes later -- I believe according to this, three minutes  
25 later -- the same day and said, "Be advised there will be no

1 discussion of settlement with Autoliv unless and until said  
2 letter is withdrawn."

3 Q. I think you said earlier on that the parties would  
4 exchange correspondence via e-mail. Was there any sort of  
5 agreement reached by the parties to do that?

6 A. I don't know if I would call it an agreement  
7 necessarily.

8 I would say early in the case, if you look at Exhibit D  
9 in the materials, one of the lawyers who represented Bosch,  
10 I believe, e-mailed Ms. Hobson but didn't copy others on the  
11 Butler Wooten team, and Ms. Hobson said, "We insist you copy  
12 our entire team on all correspondence regarding this  
13 case. This is our third request. The list of e-mails is  
14 pasted again below."

15 And there is seven or eight folks from both the Ballard  
16 & Feagle firm and the Butler Wooten firm listed there.

17 Mr. Butler responded on top of that saying, "Any e-mails  
18 that are not copied to all on plaintiffs' team will be deemed  
19 nonreceived and there will be no response thereto."

20 So I don't know that there was a formal agreement, but  
21 I know that we at that point going forward copied all of the  
22 folks that they wanted us to copy on all written  
23 communications via e-mail.

24 Q. Did plaintiffs accept your offer of settlement?

25 A. No.

1 Q. Did you have any further settlement discussions with  
2 plaintiffs' counsel after you received the e-mail previously  
3 marked as Exhibit B?

4 A. No.

5 Q. What did you take away from plaintiffs' counsel's May  
6 25th, 2016, e-mail?

7 A. That it was a rejection of our offer of settlement.

8 Q. I'm going to switch gears a little bit now and talk a  
9 little bit about attorneys' fees.

10 If you could look at Exhibit C, which is in front of  
11 you, are you familiar with that document?

12 A. I am.

13 Q. And what does that represent?

14 A. Exhibit C are the bills that include the fees for which  
15 we seek recovery under O.C.G.A. 9-11-68. These bills have  
16 all been satisfied by Autoliv.

17 And there are some redactions in here for two reasons.

18 The first redactions relate to entries that predated the  
19 rejection of the offer of settlement, which means we can't  
20 recover those.

21 And there are a smattering of additional redactions  
22 that, given the fact that the case is pending in the  
23 Eleventh Circuit currently, we just didn't feel comfortable  
24 sharing with the other side.

25 But in my experience if you are not willing to share the

1 entry with the other side, you can't recover for it, so we  
2 are not.

3 Q. You said based on your experience. Have you ever  
4 testified as an expert witness regarding the reasonableness  
5 of attorneys' fees?

6 A. Several times.

7 Q. How many times?

8 A. Less than ten.

9 Q. But more than one?

10 A. More than once. I have testified as to the  
11 reasonableness of attorneys' fees at trial twice.

12 Q. Have you ever testified regarding the reasonableness of  
13 another's attorney's fees?

14 A. Yes. Other firms in Atlanta have hired me to testify  
15 about the reasonableness of their fees in certain litigation  
16 matters.

17 Q. Has any court ever prohibited or precluded you from  
18 speaking on the reasonableness of attorneys' fees for lack of  
19 expertise or otherwise?

20 A. No.

21 Q. Are you generally familiar with the hourly rates  
22 charged by attorneys in wrongful death product liability  
23 cases?

24 A. Yes.

25 Q. How are you aware of those rates?

1 A. I'm aware of it in lots of ways, but three primary  
2 ways.

3 Number one, I negotiate rates with very sophisticated  
4 consumers of legal services. I'm the client attorney for  
5 Koch Industries -- K-o-c-h, Koch Industries -- Autoliv,  
6 Georgia-Pacific, Mohawk Industries, Sto Corporation,  
7 Geographics, and all of these companies negotiate with me on  
8 rates. They tell me what others are charging out there, my  
9 competitors. And so we have to stay competitive, and so  
10 that's one way I know.

11 Another way I know is for six years I was the head of  
12 the largest practice group in my firm, and so I was  
13 constantly dealing with consultants who would help us set our  
14 rates. So I know generally what people are charging in the  
15 area for these types of cases.

16 And, finally, just anecdotally, I know a lot of folks in  
17 town who do similar work at the other firms that I'm familiar  
18 with, and so, yeah, I'm familiar with the rates.

19 Q. Do you have a position regarding the reasonableness of  
20 the fees that Autoliv is seeking in this case?

21 A. Yes. My position is that they are reasonable.

22 Q. What were the rates that you and the attorneys working  
23 with you charged in this case?

24 A. My current hourly rate is \$790 an hour. We froze my  
25 rate in this case, and at that time it was \$715 an hour.

1 However, we gave them a 15 percent discount, which equates to  
2 roughly a little over six hundred dollars an hour for my  
3 time.

4 You were frozen at \$575 throughout the entirety of the  
5 engagement, I believe, and after the 15 percent discount, it  
6 ends up being in the high four hundreds. I believe \$488,  
7 \$489 per hour.

8 I would mention one other thing, and that is we staffed  
9 this very leanly. This entire case, which was complex and  
10 had a lot of documents and a lot of witnesses, we handled  
11 with two lawyers.

12 Q. What type of work were you performing from May 2016 to  
13 October of 2016 in this case?

14 A. The bulk of the work resulted from the fact that while  
15 our brief -- or strike that -- our motion for summary  
16 judgment was pending, we learned that Mazda, the manufacturer  
17 of the 2005 Mazda 3, settled with the plaintiffs, and that  
18 changed our view in terms of how to try the case. We had  
19 assumed that Mazda would be with us.

20 And so we had to think about how we would take  
21 depositions for preservation of evidence and use at trial of  
22 experts that the plaintiffs had hired and that sort of  
23 thing.

24 So it changed our strategy regarding trial. That was  
25 the bulk of the time.

1 Q. What are the total fees you are seeking to recover in  
2 this case?

3 A. \$29,977 or so. It's under thirty thousand dollars.  
4 It's in our papers. Sorry.

5 MS. MENDELSON: Your Honor, at this time I would  
6 like to tender Exhibits A through D into evidence.

7 THE COURT: Any objection?

8 MS. CANNELLA: No, Your Honor.

9 THE COURT: They are admitted.

10 MS. MENDELSON: That's all the questions I have.

11 THE COURT: All right. Plaintiff's turn.

12 THE WITNESS: May I get some water, Your Honor?

13 THE COURT: You may.

14 MS. CANNELLA: May it please the Court.

15 -- -- --

16 CROSS-EXAMINATION

17 BY MS. CANNELLA:

18 Q. Mr. Scribner, I have to admit, I have never had the  
19 opportunity to question a lawyer, a fellow member of the  
20 bar, on the stand. So I don't know that it could be  
21 pleasant, but my goal is to make it as not unpleasant as  
22 possible.

23 First, let me ask you this. Is there anybody here today  
24 from Autoliv?

25 A. In the courtroom?



1 Q. Yes, sir.

2 A. No.

3 Q. Do you have the exhibits in front of you?

4 A. I do.

5 Q. Can you turn to Exhibit B, please?

6 A. Your Exhibit B?

7 Q. Your Exhibit B.

8 A. Yes.

9 Q. Can you please tell the Court where the word "rejection"  
10 is used in that e-mail?

11 A. The word "rejection" does not appear in this e-mail.

12 Q. Okay. And can you please turn to Exhibit D? Your  
13 Exhibit D.

14 A. Yes.

15 Q. This is the e-mail that Autoliv contends created an  
16 agreement by which the parties could effect service through  
17 electronic means; correct?

18 A. No.

19 Q. Okay. Was there an agreement by which the parties could  
20 effect service through electronic means?

21 A. I don't think there was a formal agreement where we  
22 agreed to that, no.

23 Q. Isn't it true that Federal Rule of Civil Procedure 5  
24 requires there be an agreement before electronic service is  
25 sufficient under the rule?

1 A. Service of pleadings, correct. Offer of settlement is  
2 not a pleading.

3 MS. CANNELLA: May I approach, Your Honor?

4 THE COURT: You may.

5 MS. CANNELLA: I am going to hand you a copy of  
6 Rule 5.

7 THE COURT: Let me ask you, did the plaintiffs  
8 serve by e-mail?

9 MS. CANNELLA: I'm sorry, Your Honor?

10 THE COURT: Did the plaintiffs serve pleadings and  
11 communications by e-mail?

12 MS. CANNELLA: We served everything through the  
13 mail. We always sent courtesy copies as well.

14 THE COURT: So you did serve by e-mail? Were  
15 there communications in e-mails that were not pleadings that  
16 were communicated by e-mail as opposed to being sent by a  
17 letter?

18 MS. CANNELLA: Certainly we did talk to each other  
19 over e-mail, Your Honor, yes.

20 THE COURT: I mean, did you routinely use e-mail?

21 MS. CANNELLA: With items that had to be served  
22 under the rules?

23 THE COURT: You know, you are picky about this.  
24 I have read this e-mail from Mr. Butler. It's pretty clear  
25 to me what it was.

1 I'm just trying to figure, because now you are  
2 saying, well, it wasn't really -- it didn't meet the  
3 requirements of the rule. I'm just trying to figure out how  
4 the parties litigated and whether or not they waived the  
5 requirement.

6 Did you routinely exchange pleadings and  
7 communications by e-mail?

8 MS. CANNELLA: Yes, we did communicate for regular  
9 communications via e-mail.

10 For those documents that had to be served under  
11 the rules, Autoliv served via U.S. Mail, plaintiff served  
12 via U.S. Mail, and plaintiff also sent electronic courtesy  
13 copies.

14 I'm not sure, I can't stand here and tell the Court  
15 that Autoliv did or did not serve electronic courtesy copies  
16 as well, but I do have certificates of service which are also  
17 on the Court's system as well --

18 THE COURT: No, I mean, I understand what's going  
19 on here, so continue your interrogation.

20 I have read these e-mails. I have dealt with  
21 lawyers for a long time. I have dealt with your firm on at  
22 least one conference call in this case, and so I understand  
23 the tone and the manner in which your firm communicates,  
24 especially Mr. Butler.

25 And this, I understand this communication. I have

1     been doing this for almost forty years, I understand exactly  
2     what he was communicating. And any lawyer would.

3             MS. CANNELLA: Well, Your Honor --

4             THE COURT: Continue.

5             MS. CANNELLA: Okay.

6     BY MS. CANNELLA:

7     Q. Mr. Scribner, Exhibit D followed a series of incidents  
8     where the lawyers in the case on the defense side were not  
9     copying paralegals and legal assistants; correct?

10    A. As long as you are not including me as a lawyer, because  
11    we always did.

12    Q. Oh, okay. Well, this e-mail itself was not copied to  
13    the legal assistants originally; correct?

14    A. That's what -- your e-mail suggests that, yes, that they  
15    were not copying the right people. The lawyers for Bosch  
16    were not.

17    Q. And you said that Autoliv always copied all legal  
18    assistants and paralegals in accordance with that request?

19    A. I believe after we received this e-mail, Ms. Mendelsohn  
20    and I had a conversation and I said make sure that every  
21    human being they wanted to be copied on every e-mail is  
22    copied, please.

23    Q. Could you please turn to Exhibit B?

24    A. Your B or my B?

25    Q. Your B.

1 A. Thank you.

2 Yes, I have it.

3 Q. The letter that was sent with the offer of settlement  
4 was attached to Ms. Mendelsohn's e-mail that is in the  
5 string; correct?

6 A. I believe that's correct, yes.

7 Q. Okay. And the reply to it, in fact, shows that the  
8 people on it did not include the legal assistants; correct?

9 A. From Mr. Butler?

10 Q. Yes, sir.

11 A. There is a Ms. Huff, Ms. Telgenhoff. I don't know if  
12 they are legal assistants or not.

13 Q. Okay.

14 A. I think they are.

15 Q. Okay. But the original Exhibit D requested that  
16 Julie Houston be included as well.

17 THE COURT: And who is Ms. Houston? Is she a  
18 lawyer?

19 MS. CANNELLA: She's one of the paralegals,  
20 Your Honor.

21 THE COURT: Did she make an appearance in the  
22 case?

23 MS. CANNELLA: No, sir.

24 THE COURT: But you insisted that anybody dealing  
25 with this had to be e-mailed; otherwise, it would considered

1 as nonreceived?

2 MS. CANNELLA: Your Honor, we were trying to make  
3 sure nothing would fall through the cracks, so we didn't miss  
4 something or --

5 THE COURT: I have never seen any lawyer insist  
6 that they would not consider something as being received  
7 unless every legal assistant, paralegal and lawyer was  
8 copied on a communication. I have never seen that either  
9 when I was in practice, when I was in public service, or on  
10 this job.

11 And if you think that's reasonable, then you and  
12 I can disagree about how one ought to practice law.

13 MS. CANNELLA: Your Honor, we certainly agree that  
14 we received the letter, the offer of settlement. We don't  
15 contest that at all.

16 THE COURT: Then let's move on.

17 BY MS. CANNELLA:

18 Q. Mr. Scribner, I want to talk to you briefly about  
19 Autoliv's defense in the case.

20 Would you agree that Autoliv knew there was a  
21 possibility it could lose on its motion for summary judgment  
22 or in the Eleventh Circuit?

23 A. Yes.

24 Q. In fact, you talked to *The Daily Report* about the  
25 confusion in the law on this issue?

1 A. I believe people are confused on the law on this issue.

2 Q. Pages six through seven of Autoliv's reply brief  
3 identifies the factors that Autoliv analyzed when considering  
4 the appropriate settlement amount in this case.

5 Would you please turn to pages six and seven?

6 A. Page six and seven of our brief?

7 Q. Your reply brief.

8 A. Give me a moment, please.

9 I'm sorry, what pages again, please?

10 Q. Six and seven.

11 A. I am there.

12 Q. Thank you.

13 The list starts in the first full paragraph on page six  
14 and goes into page seven. Is that representation of the  
15 factors Autoliv considered a complete and accurate  
16 representation?

17 A. Well, it says when considering the value of the case, we  
18 considered the following things. And we did, we considered  
19 all of those things.

20 If you are asking me are those the only things that we  
21 considered, we considered hundreds of things. We have been  
22 litigating hammer and tongs for three years. We considered  
23 the entirety of the record.

24 Q. Are these the important factors that Autoliv considered?

25 A. They are important factors that we considered.

1 Q. Were there other major factors that Autoliv considered?

2 A. Cost, the litigation expenses that we would incur if we  
3 didn't settle, we considered that as well.

4 Q. So the cost, and then the factors identified in this  
5 brief; correct?

6 A. Yeah, I think so.

7 Q. Page seven says that Autoliv considered the likely full  
8 value of damages in the case. What did Autoliv believe the  
9 likely full value of life damages were?

10 A. The economic damages according to your expert were a  
11 little over two million dollars. We would cross-examine him  
12 at trial; however, it wasn't wildly out of bounds with the  
13 economic value here.

14 We considered that, along with the fact that there would  
15 be something more than that in the event there was a  
16 plaintiffs' verdict. And so we took that amount, and then we  
17 reduced it based upon our likelihood of success at the trial  
18 court, at the Eleventh Circuit, perhaps at trial.

19 And in light of the fact that our position was right or  
20 wrong, we thought the vast majority of the responsibility for  
21 what happened here rested with the decedent himself, Mazda  
22 and Bosch.

23 Q. And what did Autoliv believe the value of Mr. Andrews'  
24 life would be?

25 A. Can you rephrase, please?



1 Q. What did Autoliv believe the value of Mr. Andrews' life  
2 would be as found by the jury?

3 A. I'm sorry, that last part?

4 Q. As found by the jury.

5 A. Oh, I think the range would be somewhere between a  
6 factor of the two million. So it would be more than two  
7 million would be my guess.

8 Q. It could have been three million?

9 A. It could have been a hundred million.

10 But realistically it was two million in economic  
11 damages. It was going to be something more than that at  
12 trial we thought for the whole case if there was a  
13 plaintiffs' verdict, if we didn't win directed verdict, if  
14 the Eleventh Circuit didn't affirm, and if all of it was  
15 placed at the doorstep of Autoliv, which we strongly felt was  
16 not going to happen.

17 Q. One of the things Autoliv considered in determining the  
18 amount of the offer was, quote, Mr. Andrews was dealing with  
19 marital difficulties, closed quote. Is that correct?

20 A. I don't know that it played a massive role in our  
21 assessment of the case, but it was out there. There were  
22 marital difficulties. They were sleeping in different  
23 bedrooms, that sort of thing.

24 Q. Why would Autoliv bring that up in its brief?

25 A. Why would it bring it up in its brief?

1 Q. Yes, sir.

2 A. Because it's a factor in terms of figuring out how you  
3 value the case. There are cases where children get burned,  
4 there are other cases where a surviving spouse is bringing a  
5 claim on behalf of their surviving spouses where they are  
6 having marital difficulties. Those are two very different  
7 scenarios.

8 Q. Autoliv knew that marital difficulties are not  
9 admissible at trial; correct?

10 A. Pardon me?

11 Q. Autoliv knew that marital difficulties are not  
12 admissible at trial; is that right?

13 A. Did Autoliv know that marital difficulties were  
14 inadmissible at trial?

15 Q. Yes, sir.

16 A. I think that depends on the case that you tried.

17 MS. CANNELLA: May I approach, Your Honor?

18 THE COURT: You may.

19 BY MS. CANNELLA:

20 Q. I'm going to hand you a case that I have highlighted,  
21 *Cornelius v. Macon-Bibb County*, 243 Ga. App. 480. I have  
22 tabbed and highlighted a passage there.

23 On cross-examination, Mrs. Crump's daughter  
24 confirmed that there was a period of about three  
25 months that Mr. Crump lived with someone else, but

1                   by the time Mrs. Crump died, Mr. and Mrs. Crump had  
2                   reconciled.

3           Did I read that correctly?

4   A.   Where are you reading from, please?

5   Q.   The first highlight.

6   A.               On cross-examination, Mrs. Crump's daughter  
7                   confirmed that there was a period of about three  
8                   months that Mr. Crump lived with someone else, but  
9                   by the time Mrs. Crump died, Mr. and Mrs. Crump had  
10                  reconciled.

11   Q.   Correct. And then the second passage says that's  
12       highlighted:

13                   *Wright* holds that marital problems do not  
14                   reduce the measure of damages or the damages  
15                   recoverable.

16       Did I read that correctly?

17   A.   Yes, you did.

18               THE COURT: I note in that paragraph it started out  
19       with the court granting a motion *in limine* for whatever  
20       reasons were given about marital difficulties. The question  
21       was whether or not it had been opened on cross-examination.  
22       The Court of Appeals said that it had to be.

23               So it started with an order of the court that that  
24       not, for whatever was argued at the motion *in limine* stage,  
25       that that was not admissible.

1           So the only question here was whether or not there  
2       had been direct examination that opened the door, and the  
3       court said there wasn't.

4           MS. CANNELLA: Correct, Your Honor, yes.

5           THE COURT: It's different than the way that you  
6       characterized the case, but I have read it.

7       BY MS. CANNELLA:

8       Q. Do you agree that plaintiffs' medical expert,  
9       Dr. Burton, testified that Mrs. Andrews suffered conscious  
10      pain and suffering before his death?

11      A. That Mr. Andrews did?

12      Q. Yes, sir.

13      A. His opinion was that he did, correct.

14      Q. And did Autoliv hire an expert to contest any of the  
15      opinions besides the opinion from the seatbelt expert?

16      A. We did not hire a testifying expert on the issue of  
17      conscious pain and suffering.

18      Q. Do you have plaintiffs' exhibit notebook?

19      A. Yes, I do.

20      Q. Could you turn to Exhibit H?

21      A. Yes.

22      Q. Would you stipulate that these bills reflected in the  
23      summary are the bills that Autoliv had access to through the  
24      depositions? Or I should say the bills in -- one of them is  
25      an estimate and the testimony of the expenses.

1 A. You have me there. I don't know.

2 Q. Okay.

3 A. Are these fees that plaintiffs' experts charged your law  
4 firm?

5 Q. These are the bills from the depositions in the case.

6 A. I'm not sure I understand, from the depositions?

7 Q. Yes. They are exhibits to the depositions for the  
8 experts.

9 A. Oh, I see, I got it. This is their time, and they were  
10 introduced as exhibits at their deposition.

11 Q. Correct.

12 A. I have no reason to dispute it. I don't know it to be  
13 the case.

14 MS. CANNELLA: That's all I have for  
15 Mr. Scribner. Thank you.

16 THE COURT: Redirect?

17 MS. MENDELSON: No, Your Honor.

18 THE COURT: All right. Thank you for your  
19 testimony. You can return to counsel table.

20 THE WITNESS: Thank you.

21 THE COURT: Anything else that the defendants want  
22 to present?

23 MS. MENDELSON: If Your Honor would like argument,  
24 we would be happy to give some, but --

25 THE COURT: We will do evidence first.

1 Anything that the plaintiffs would like to present  
2 in the form of evidence or testimony?

3 MS. CANNELLA: I'm sorry, Your Honor?

4 THE COURT: Is there any evidence or testimony you  
5 would like to present?

6 MS. CANNELLA: No, sir.

7 THE COURT: Other than what you have presented in  
8 your attachments that I received in your notebook?

9 MS. CANNELLA: Correct, Your Honor. Thank you.

10 THE COURT: I mean, does anybody have any objection  
11 to me considering anything that was presented by either side  
12 for use at this hearing?

13 MS. MENDELSON: No, Your Honor.

14 MR. SCRIBNER: No, Judge.

15 THE COURT: Even though some of that was not  
16 referred to, but I'm happy to consider that, if nobody  
17 objects to it?

18 MS. CANNELLA: I don't think we have an objection  
19 to that. Thank you, Your Honor.

20 MS. MENDELSON: None, Your Honor.

21 THE COURT: I think everybody has submitted their  
22 briefs on this. The purpose of the hearing was that because  
23 under state law the plaintiff in this case was entitled to a  
24 hearing in order to contest the reasonableness of the fees,  
25 and I've taken the testimony, you had a chance to cross, and

1 you have admitted these -- now we have admitted these other  
2 exhibits.

3 Which we probably ought to make sure that the  
4 record is clear on what those are. If you don't mind,  
5 I think the exhibits are -- didn't you give us -- your  
6 plaintiffs' exhibits were at Docket Entry 303, which lists  
7 the A through I exhibits that you want me to consider?

8 MS. CANNELLA: Yes, sir.

9 THE COURT: So I'm going to admit all of those.

10 And then the plaintiffs' exhibits are only Exhibits  
11 A, B, C and D, and those are listed at Docket Entry 301.

12 MS. MENDELSON: I think you said plaintiffs', but  
13 those are ours.

14 THE COURT: I'm sorry, defendant Autoliv's.

15 MS. MENDELSON: Yes, Your Honor.

16 THE COURT: So that's in the record, the testimony  
17 is in the record, your briefs are in the record. But if  
18 there is something that occurred to you as a result of this  
19 that you want to add to that, let's do that now, starting  
20 with the defendant.

21 MS. MENDELSON: We don't have anything to add,  
22 Your Honor, unless there are any questions that you have?

23 THE COURT: Well, I have read everything so far and  
24 I have listened to the testimony.

25 Anything else that the plaintiffs would like to

1 add?

2 MS. CANNELLA: Your Honor, may I hand up a recent  
3 case from the Court of Appeals on the 9-11-68?

4 THE COURT: Thank you.

5 MS. CANNELLA: Sure.

6 I would just like to bring this case to the Court's  
7 attention. It addresses an argument about a rejection under  
8 9-11-68, and on the place that I flagged the Court of Appeals  
9 held that the statute must be strictly construed against the  
10 award of attorneys' fees.

11 And it also states on page five of that opinion,  
12 which I am sure the Court will read so I won't summarize the  
13 entire thing, but it emphasizes that the rejection must be in  
14 writing and served upon the offeror, those two requirements  
15 in italics.

16 We would ask the Court to apply the statute  
17 strictly and to only award fees after the time of the 30-day  
18 elapse.

19 THE COURT: So you are not contesting that the  
20 demand was made in writing and that you received it?

21 MS. CANNELLA: No, sir.

22 THE COURT: All right. And you are not contesting  
23 that it was rejected?

24 MS. CANNELLA: Your Honor, we are contesting that,  
25 but I can tell from your countenance that you don't agree.



1           THE COURT: Well, look, you know, when somebody  
2           sends an e-mail saying that unless you revoke the letter I'm  
3           not going to talk to you about resolving the case, at any  
4           time did he come back and say, look, I know you didn't reject  
5           it, but we have an obligation to respond to the letter, we  
6           reject it, or we are not going to respond? You were just  
7           silent, weren't you?

8           Did you ever at all, other than Mr. Butler's  
9           e-mail, ever respond to the letter?

10          MS. CANNELLA: Your Honor, we didn't respond, and  
11          Autoliv didn't respond either.

12          And if Your Honor is curious about that  
13          three-minute-after-the-offer e-mail, I can provide some  
14          context.

15          In terms of these offers of settlement, for  
16          somebody who is in Ms. Andrews' position, a single working  
17          mom with a child to care for, an offer of settlement is a  
18          huge -- not just a thumb on the scale, it's a threat of  
19          bankruptcy.

20          And so in dealing with defendants who don't want to  
21          pay fees but certainly could have the ability to pay fees,  
22          there is a huge imbalance of power there.

23          So while we are always happy to entertain good  
24          faith settlements, when you have that threat against an  
25          individual who is facing bankruptcy potentially paying

1 white-shoe law firm fees, you have --

2 THE COURT: First of all, let's get rid of the  
3 rhetoric, let's get rid of all the emotional things. This is  
4 a letter that -- state law provides that you can send these  
5 letters.

6 MS. CANNELLA: Absolutely, Your Honor.

7 THE COURT: And the letter was sent, and there was  
8 a three-minute response by the named partner in your firm.

9 MS. CANNELLA: Yes, sir.

10 THE COURT: Rather than a thoughtful response  
11 saying let me think about it, let me talk to my client about  
12 it, we are not inclined, but we will get back to you, it  
13 was -- it said we are not going to talk about this unless you  
14 withdraw the letter.

15 So talk about leverage, the leverage was that you  
16 are not going to strike any deal with us. And I'm sure you  
17 can say all the things that you said to them you have been  
18 saying to me about single mom who has lots of obligations --  
19 I don't see how a hundred thousand dollars or two hundred  
20 thousand dollars would bankrupt her, but I think I understand  
21 kind of what you are trying to get at.

22 And instead, a lawyer sends this quick, curt  
23 response three minutes after they get it, and then never does  
24 anything.

25 MS. CANNELLA: Your Honor, we --

1           THE COURT: I know what e-mails like that mean, and  
2 I think any lawyer would know that unless you withdrew it, we  
3 are not going to talk.

4           And he followed through on that, because you didn't  
5 talk. You didn't talk, none of all those people that you  
6 insisted on e-mails be sent to talked, Mr. Butler didn't  
7 talk, Mr. Peak didn't talk, whoever else was on this case,  
8 not a word. Because it was rejected.

9           MS. CANNELLA: Your Honor, I understand your  
10 position. And it was rejected, you are absolutely right. It  
11 was just thirty days after the letter was sent.

12          THE COURT: But it was rejected.

13          MS. CANNELLA: It was rejected by silence, yes,  
14 Your Honor.

15          THE COURT: And your argument is that in  
16 calculating attorneys' fees, you have to take into  
17 account the terms of the statute, and that the attorneys'  
18 fees don't run until a date after Mr. Butler's one-line  
19 three-minute-after-the-offer-was-sent rejection.

20          MS. CANNELLA: Until after the thirty days,  
21 correct.

22          THE COURT: I understand that.

23          MS. CANNELLA: Yes, sir.

24          THE COURT: So it's a legal argument that the time  
25 for attorneys' fees doesn't begin to run until some period

1 under the statute after the letter was sent.

2 MS. CANNELLA: Yes, sir. That's our second  
3 argument, that's correct.

4 And -- well, I have lost my train of thought.  
5 But -- oh, I wanted to tell the Court that we made an error  
6 in the calculation. Under the summary --

7 THE COURT: Do you want to just send a follow-up  
8 e-mail correcting the calculation?

9 MS. CANNELLA: Sure.

10 THE COURT: That would be fine.

11 MS. CANNELLA: Sure, we can do that.

12 And, Your Honor, we also contend that the offer was  
13 not made in good faith, but if the Court does not want to  
14 hear argument on that, then we absolutely respect the Court's  
15 position on that.

16 Thank you.

17 THE COURT: Thank you.

18 Anything else?

19 MS. MENDELSON: Just thirty seconds, Your Honor.

20 Having seen this case and the statute needing to be  
21 strictly construed, I actually think that works in favor of  
22 Autoliv.

23 Because 9-11-68 (a) (8) prescribes the offer letter  
24 has to be written and served as required by Code Section  
25 9-11-5. And then going down to 9-11-68 which speaks to the

1 response, it just says writing served.

2 So under the *expressio unius* canon that plaintiffs  
3 like to cite and has been cited here, I actually think that  
4 would enure to our benefit.

5 MS. CANNELLA: Your Honor, may I respond to that  
6 one argument?

7 Here is the statute.

8 THE COURT: Thank you.

9 MS. CANNELLA: The subsection that Ms. Mendelsohn  
10 is referring to -- do you know which subsection it was?

11 MS. MENDELSON: (a) (8) and then also (c).

12 MS. CANNELLA: So under (a) (8), it says that the  
13 offer must include a certificate of service and be served by  
14 certified mail or statutory overnight delivery as required  
15 under 9-11-5. (a) (8) references 9-11-5 because it is  
16 narrowing the categories under that statute that can be used  
17 to serve.

18 In contrast, the rejection provision under  
19 Subsection (c) does not narrow the category. So we could  
20 have served it via mail, overnight delivery, in hand, or  
21 electronic service had there been an agreement among the  
22 parties to accept such service, which there was not in this  
23 case.

24 Thank you.

25 THE COURT: All right. Thank you.

1           Ms. Andrews, I feel sorry that you had to listen to  
2           some of the things that we went through today. I think you  
3           have gone through a very difficult time. I've gone through a  
4           similar time in my family.

5           So this is what lawyers do sometimes, and it's not  
6           the first time I have had to listen to it, but I think it's  
7           the first time in a while where somebody who has gone through  
8           the sort of suffering that you have been through would have  
9           to listen to this sort of squabbling.

10          I'm going to do what I think is right on behalf of  
11          both of the parties. I'll have a chance to read these  
12          cases.

13          But I appreciate your being here, and I'm sorry  
14          some of the personal things had to be revisited by you. In  
15          my prayers, ultimately the further you get away from this,  
16          the more perspective you can get.

17          I think that that will happen, at least that's been  
18          my experience. And I wish you well as you go through that  
19          process, although I know it's not an easy one.

20                MS. ANDREWS: Thank you.

21                THE COURT: Anything else?

22                MS. MENDELSON: No, Your Honor.

23                MS. CANNELLA: No, Your Honor.

24                THE COURT: We will be in recess.

25                       (Proceedings adjourn at 3:10 p.m.)

## C E R T I F I C A T E

UNITED STATES OF AMERICA :  
:  
NORTHERN DISTRICT OF GEORGIA :

I, Nicholas A. Marrone, RMR, CRR, Official Court Reporter of the United States District Court for the Northern District of Georgia, do hereby certify that the foregoing 38 pages constitute a true transcript of proceedings had before the said Court, held in the city of Atlanta, Georgia, in the matter therein stated.

In testimony whereof, I hereunto set my hand on this, the 27th day of July, 2017.

*/s/ Nicholas A. Marrone*

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NICHOLAS A. MARRONE, RMR, CRR  
Registered Merit Reporter  
Certified Realtime Reporter  
Official Court Reporter  
Northern District of Georgia